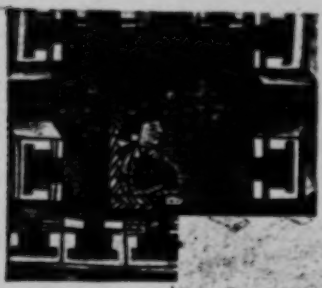
1:Vaillant A-5 (1928-1936)1941 NU7 Aztec NU7

531



Rich Man

[482]

Poor Man

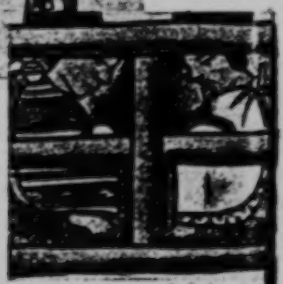
Beggar Man

[735]

Goldsmith

[326]

Thief



[685]

Feather Worker

[286]

[701
441
714]

Warriors

PLATES 34-35

AZTEC SOCIETY AND COSTUME FROM

During the mid-sixteenth century the Spanish friar Bernardino de Sahagun made a famous study of the Aztecs, *Historia General de Nueva España*, which was not published until 1829. He had the Indians prepare copious illustrations to clarify his text, but they did not reach public circulation until 1905. The selections here show, besides the social division

[P. 112(B)]

1:Vaillant A-5 (1928-1936)1941 NU7 Aztec NU7

692 that thefts and like petty crimes increased as mutual responsi-
[186] bility diminished. The increasing complication of tasks and manners of livelihood led to disputes and injustices. In a nation of warriors skilled in arms, personal animosity flared up into bloodshed. Thus the tribunals mentioned had to be set up to exercise their jurisdiction in affairs of clan and tribe and to reinforce the powerful influences of public approval and disapproval. (See Plates 35, 41.)

688 Religious crimes, like blasphemy or robbing temples, were
775 rare, for the disfavor of the gods brought disaster on the community and on the individual as well. Religion, however, did not enter into the field of ethics, and no post-mortem punishment awaited the sinner. Special heavens existed for warriors and for women who died in childbirth and for people who died in certain specified ways, but this belief had to do with the favor of particular gods. It was not a carefully defined system of rewards and punishment.

681 Restitution for the sinned-against was the chief basis of dealing with antisocial acts, in contrast to our pattern of punishing the sinner. Exile or death was the lot of the evildoer who endangered the community. A random sampling of crimes and punishment will show the tenor of Aztec law and why it was never necessary to resort to imprisonment as a means of enforcing expiation of a crime. Cages or detention pens, however, were used to confine prisoners before trial or sacrifice. (See Plate 34.)

• 685 Theft was punished either by slavery until restitution was made or by a fine of double the amount stolen, one part to the robbed, the other to the clan treasury. Highway robbery received the death penalty, and pilfering in the market place meant instant death by stoning, since that petty crime mili-

1:Vaillant A-5 (1928-1936)1941 NU7 Aztec NU7

tated against the social advantages of the gathering. To steal corn, the staple of life, when growing in the field, was a serious offense, demanding the death penalty or slavery, but a wayfarer might with impunity satisfy his hunger by plucking ears from rows adjacent to the road. To filch gold, silver and jade, precious substances reserved for religious ornaments, was also a mortal crime.

Murder, even of a slave, brought the death penalty. Rebels and traitors received the same fate, but kidnapers were sold into slavery. Drunkenness was a serious crime except at prescribed ceremonial occasions. Social disapproval, public disgrace, even death by stoning or beating, were penalties suffered by the intemperate. However, the old of both sexes, who had fulfilled their tribal obligations, were allowed great latitude in their potations.

The witch or practicer of black magic was sacrificed, and death was likewise the lot of him who impersonated a high official. A slanderer had his lips cut off and sometimes his ears as well. Brawling and fighting in the market place were dealt with severely, but in an ordinary case of assault the assailant paid for the cure of the assailed and for any damage done. Adultery was punished with great severity, even death, when committed outside the pale of the divorce laws. Hanging was the usual penalty for violation of the incest laws, and sodomy was punished with revolting brutality.

Thus reduced to cited instances, Aztec law was brutal. Actually, from childhood on, the individual grew up into correct social behavior; the violator of the code met with serious consequences. All people had some kind of personal property, but land belonged to the tribe and only its produce to the individual. Therefore, the elaborate legislation

6: Sahagún M-5 (1529-1590) 1954 NU7 Astec NU7

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eloteszcalli, ioan in jxquich qualoni, tlaxcalli, tamalli, necuztamalli, necutlaxcalli, vei tlaxcalli, tlaxcalmjmjlli.

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463
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[276]
[345]

No ioan vncatca, in tlaiacanque in jpan manca acaquaxjtl, acaiietl, iietlalli, vel ocotzoio, ioan xochiocotzotl, ioan iiecaxitl, ioan apantlecaxitl, ioã tlequantli, ioan apantli, ioan xoctli, ioan atlalilcoxjtl, ioan xaiocoxjtl, ioan comalli, ioan molcaxitl, ioan in çoqujteconxtl, ioã in jxquich tlamantli çoqujtlatqujd.

[685]

Auh in ichoantin tianquizpan tlaiacanque, intlacamo quimocuitlauja, intequjuh, totoco, ioan caoaltilo in jntequjuh. Auh intla aca tlachtectli quinamaca, ayo tlaçotilmatli, anoço chalchiujtl, intla oiximachiiloc, intlacamo quinextia in aquin quicobujli, in tlein tlachtectli, quicxacutiuh, mjquja, iuhquj tlamonequjliaia, in tlatoque, tecutlatoque, ic mjmacaçia in tlein tlachtectli, aiac vel quicoaia,

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in jntequjuh catca tianquizpantlaca quichioaia iiaujtacatl, in tlaxcaltecapochtli, ioan pinolli, ioan texoxotzalli, ioan nexamalhoatzalli, injc ipan tequjtia tianqujztli, ioan tianquizpan tlaiacanque, in tlaixquetzalli oquichti, ioan çioa in tequjtlatoque catca.

21. Sahagún, op. cit., p. 233, describes cyuquilli as "Sales y cosas de las Indias"; on p. 238, however, it is given as Almendrapambrosia Mexicana L.

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/p. 37/ Chapter 4

OWNERSHIP OF LAND

423 Let us analyze another of the aspects of the social organization of the Tenochcas, which might lead one to think that it did not have its origin in kinship: viz., ownership of land. In the sources we find that for the most part it was related to the existence of the calpullis.

In the Spanish sources of the beginning of the conquest three really very different criteria are always taken, almost interchangeably, to refer to the ownership of land: one is the working of it personally; another is the receiving of tribute from the one who works it, and another is the receipt of rent. This last is not going to be discussed at length here; but with reference to all these criteria we can shed a little light: we are told that the Indians in their plans indicated three types of land: those of the calpullis, yellow; flesh-colored for those of the lords; and a bright red for those of the king's household (1). The significance which these indications had is what is going

1. Torquemada, II, p. 546.

to occupy us principally.

Let us establish first of all that the lands of Tenochtitlan had been originally occupied only by members of the same Tenochca group; but that there appear to be indications of later immigrations from other regions, as from Xochimilco (2), although generally we lack

2. Vetancourt, III, p. 124; Torquemada, II, p. 60.

complete data in this respect. We can suppose, however, that in the event of there having been immigrations, these were isolated with consent of the group in general since we are told, without particularizing, [685] that whoever pulled up and took away the landmarks and boundaries of the villages was subject to the death penalty (3);

3. Román, I, p. 285.

in the case of Tenochtitlan, through being in a very special situation of isolation, it was very unlikely that an invasion could occur.

14:Bandelier E-4 (no date) 1880 NU7 Aztec NU7

701 554 imitating wild animals' heads, and sometimes even the skins of those animals.[87] Their post was in the van of the army, as scouts and skirmishers, but they also acted as leaders of smaller bodies, like four to twenty men, and even larger subdivisions, at the option of their superiors.[88]

701 555 Neither of the above three grades could be obtained through appointment or election; every warrior became entitled, as soon as he had accomplished certain feats in war, to one or the other thereof.[89]

[87] Tezozomoc (Cap. XCVI, p. 171). After the successful raid of the Mexicans against Tuctepec (under the last Montezuma) it was found that 200 of the "tequihua" had made prisoners, and that an equal number were made "tequihua." "Anonymous Conqueror" (p. 373.) "To him who thus distinguished himself they made a mark, by a "peculiar cut of the hair, that he might be known for his deeds, and that everybody "might see it, since they did not accustom to wear the head covered. Every time that "he accomplished another notable action they put another similar mark on him . . ." See also Torquemada (Lib. XIV, cap. V, p. 543). Durán (Cap. XIX, p. 169) is very positive, too. Clavigero (Lib. XII, cap. XXIII). "The commanders . . . . the head "was inserted in a wooden head of a tiger or of a snake, its mouth wide open, and "with large teeth, to appear more frightful."

[88] Duran (Cap. XXXVII, p. 299). " . . . . Aviendo puesto en delantera todos "los soldados viejos y señores y capitanes y todos aquellos que ellos llamaban Cuachic, que eran una órden de caballeria que no auia de voluer piè atras ó morir . . " . " Tezozomoc says of the "Otomies, Cuachi, and Tequihuaques . . . . being "always leaders" ("siendo siempre delanteros." Cap. XXXVIII, p. 60, also, cap. LVII, p. 97). The same author (Cap. XXXVIII, p. 61, and cap. LI, p. 83) affirms that they had to care for the freshmen or young braves (Id., Cap. LXXI, p. 121). The same (Cap. LI, p. 83) says: " . . . . and you will, as it is customary, place to every five youths "a Cuachic, to five others an Otomi, then again an Achcauhtli, and a Tequihua; all "conquerors." This was done immediately before the opening of the engagement. The "Otomitl" is also called by Tezozomoc a "general" occasionally, but this merely shows that, at the option of the war-chiefs, one or the other of the above warriors of merit might be placed at the head of a larger body of men, though he was always considered as of a lower rank. Sahagun (Lib. IX, cap. VI, p. 264). "El hombre ò varon "fuerte llamado Coachic, tiene estas propiedades; es el amparo y muralla de los suyos "etc., etc." Torquemada (Lib. IV, cap. XCIX, p. 565) calls the "Quachicque" bullies ("matasiete").

[89] By this we wish to say that neither personal favor nor other prominent qualities could procure the titles which we now regard, to any one who had not distinguished himself in war. The titles were conferred immediately after the engagement, or after the return to Mexico. Who conferred them, and what ceremonies, aside from the hair-cutting mentioned, accompanied the act, we are unable to say. The Mexicans were [685] extremely careful to allow each man the prisoner he had taken, and the "penalty for "abstracting a captive to his rightful conqueror was death." Mendieta (Lib. II, cap. XXVII, p. 132). "El que llevaba algun prisionero, si otro se lo hurtaba de dia ò de "noche, o tomaba por fuerza, por el mismo caso moria como cosario ladron que se "adjudicaba y queria para si el precio y la honra del otro." The reason for this vigorous chastisement was, not only because the original captor lost thereby his object of sacrifice to the gods, but really more because the thief stole away his rank and title.

Acosta (Lib. VI, cap. XXVI, p. 434). Clavigero (Lib. VII, cap. XXI). Both mention three "military orders," "orders of chivalry." The latter calls them "achcautin," "quauhtin," and "ococelo," translating these terms by "princes," "eagles," and "tigers," respectively. Acosta is not so far from the truth when he asserts that each of

16:Bandelier E-4 (no date) 1880 NU7 Aztec NU7

463 *compelled* him to do it.[70] It is true, that such as formed gold or silver into pleasing or (as viewed from eastern notions of taste) rather striking shapes, enjoyed some particular consideration; but this was not so much in deference to their skill, as to the *material* upon which they exerted it. Gold ("teo-cuitlatl") and silver ("Iztac-teo-cuitlatl") were regarded as "offal of gods." Thus they became objects of "medicine," and those who wrought them into useful or decorative articles, were near to the "medicine-men" themselves.[71] Furthermore, the manner and method of working was so slow, it relied so exclusively upon that patient [556] disregard of time which characterizes even the manufacture of a simple arrowhead, that no accumulation of wealth could result from it.[72] Besides, the artisan had, like any other member of the kin, to furnish his share towards the requirements of public

[70] *Zurita* ("Rapport, etc," p. 129). "Les chefs inférieurs et les personnes du peuple élevaient aussi leurs enfants avec beaucoup de soin, leur inspiraient l'horreur du vice, leur recommandaient le respect des dieux, les conduisaient aux temples et les faisaient travailler suivant leurs dispositions; cependant, en général, le fils embrassait la profession de son père." *Gomara* ("*Conquista*, etc.," Vedia, Vol. I, p. 438). "Los pobres enseñaban á sus hijos sus oficios, no porque no tuviesen libertad para mostralles otro, sino porque los aprendiesen sin gastar con ellos." *Carlos Maria de Bustamante. Tezcoco en los ultimos Tiempos de sus antiguos Reyes*," 1826. Parte tercera. (Cap. III, p. 212). "Enseñaban ademas los oficios á que tenian aficion." *Clavigero* (Lib. VII, [564] cap. V, p. 462). "The sons generally learned the trade of their fathers," but they were not bound to do it, and therefore no "caste."

[71] The words are composed of: "Iztac," white object (*Molina* II, p. 49). "Teotl" god (II, p. 101), "Cuitlatl" filth, therefore gold was "offal of God," and silver, "white offal of God."

325 The working of gold and silver was regarded, by the Mexicans, as an invention of "Quetzalcohuatl." *Sahagun* (Lib. III, cap. III, p. 243). "y los vasallos que tenia eran todos oficiales de artes mecánicas, y diestros para labrar las piedras verdes, que se llaman chalchivites, y tambien para fundir plata, y hacer otras cosas; y estas artes todos tuviéron principio y origen de l dicho *Quetzalcoatl*." (Also Lib. X, cap. XXIX, [685] p. 113, etc.). Theft of gold or precious stones was punished by death through sacrifice. *Clavigero* (Lib. VII, cap. XVII, p. 467). *Vetancurt* (Parte IIa, Trat. I°, p. 484. "Leyes de los Mexicanos").

287 [72] A very remarkable way of manufacturing their most admired works — those made of feathers — is reported by *Mendieta* (Lib. IV, cap. XII, pp. 405 and 406): "And there is, besides, something else to notice of this featherwork, namely: that if there are twenty artisans, they will undertake jointly the manufacture of one piece ("imágen"), for, dividing among themselves the figure of the image in as many parts as there are of their number, each one takes his piece home and finishes it there. Afterwards they all meet again and put their pieces together, thus finishing the figure in as perfect a manner as if one alone had made the whole." (Copied by *Torquemada*, Lib. XIII, cap. XXXIV, p. 489, and, with slight variations, also by *Vetancurt*, Vol. I, p. 389.) In regard to the manner of working, *Torquemada* (Lib. XIII, cap. XXXIV, p. 487), makes the pertinent remark: "All this they worked (as we have said) with other stones, and with flint; and according to the subtlety of the work, I think they must have spent long time in finishing it." See in general *E. B. Tylor* ("*Researches into the Early History of Mankind*," Cap. VII, pp. 187 and 188), also *Motolinia* (Trat. I, cap. IV, pp. 31 and 32).

16:Bandelier E-4 (no date) 1880 NU7 Aztec NU7

565 doms, had other ways to make slaves) we say: that many condi-
567 tions were lacking, to create them actual slaves. For of these slaves of this New-Spain, some had means, might own and possess them of their own, and they could not be sold again except under the conditions mentioned hereafter. The service rendered to their master was limited, not for always, nor ordinary. Some, upon marrying, became released, their relatives or brothers taking their place. There were also skilful slaves who, besides serving their masters, still kept house, with wife and children, purchasing and holding slaves themselves. The children of slaves were born free."[84]

567 The Mexican term for slave was, literally a "purchased man" ("tlacotli.") He was in fact but a "bondsman." Through a special contract, made before authorized witnesses, his services, the proceeds of his labor, *and not his person*, became pledged to another. The member of a kin had no direct ownership in him whom he employed, he could not sell him again without that employer's consent, nor could he take his life in punishment of crime. If the latter broke his contract through repeated
● [685] evasion he might finally be "collared," that is, his neck was enclosed in a wooden yoke, by means of which he was fastened to a wall at night. If the man still contrived to escape, then he was turned over to worship and sacrificed; but in case he succeeded in secreting himself in the official house without being intercepted by his master or one of that master's people, then he was spared, and even liberated from his bonds.[85] In addition to the supply furnished to the class of outcasts in the manner above indicated, there were accessions to it from outside. Fugitives were of rare occurrence, since such, if from a tribe against which war was waged, were regarded as precious additions, too important to be ranged among the outcasts.[86] But we have several instances, in the ancient history of Mexico, of destructive
[731] drouths as well as of disastrous inundations, depriving the inhabi-

[84] "*Monarchia Indiana*" (Lib. XIV, cap. XVI, p. 364).

[85] I have gathered these details mostly from *Torquemada* (Vol. II, pp. 364-366). Compare besides others, *Veytia-cuvi* (Vol. I, pp. 433, 434, and 435) and nearly all modern writers.

[86] *Mendieta* (Lib. II, cap. XXVI. p. 130): "Y si de la parte contraria salia alguno á descubrir y dar aviso cómo su señor ó su gente venian sobre ellos, al tal dábanle mantas y pagábanle bien." Copied by *Torquemada* (Lib. XIV, cap. II, p. 338), and *Veytia-cuvi* (Parte II, Trat. II, cap. III, p. 364).

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The woman, as participant in the offence, was also killed. Both were executed in public.[128] Theft of objects was variously punished. If the article was of small value and could be returned, its restitution settled the matter;[129] but if it were of greater value and could not be returned, then the thief became "bondsman" to the injured owner or even suffered death for his crime.[134] The

[128] If, however, the husband killed the wife himself, even if he caught her *flagrante delicto*, he lost his own life. This shows clearly, that the crime was considered as one not so much against the man, as against the cluster of kindred to which he belonged, and they were consequently not only bound but *entitled* to avenge it. Evidence of this punishment of the injured husband in case he avenged himself, is found in many authors. See *Mendieta* (Lib. II, cap. XXIX, p. 126), *Torquemada* (Lib. XII, cap. IV, p. 576), *Clavigero* (Lib. VII, cap. XVII, p. 494), and *H. H. Bancroft* (Vol. II, p. 495).

In strange contrast with the frequent assertions of the high-handed manner in which the chiefs are said to have used, at their will and good pleasure, the women of the land, as for instance in *Gomara* (Vedia I, pp. 438 and 439), *Motolinia* (Trat. II, cap. VII, p. 125) and others, we find it positively stated that adultery and rape were severely punished even in the case of the highest officers and chieftains. Thus, the case of the chief of Tlaxcallan, who was executed for adultery, is related with full details by *Las Casas* ("*Hist. apologética*," Cap. 213, in Vol. VIII, of Kingsborough, p. 125), *Zurita* (pp. 197 and 198) *Torquemada* (Lib. XII, cap. XV, p. 536). Another story of a son of the chief of Tezcuco, killed for intercourse with girls then in the houses of worship, is also fully given. *Ixtlilxochitl* ("*Hist. des Chichimèques*," Cap. XLIV, pp. 313-320), *Torquemada* (Lib. II, cap. LXV, p. 139), etc. These are strange contradictions and are, sometimes, found even between fact and fact as told by the same author.

[129] *Gomara* (Vedia I, p. 448), says: "El ladron era esclavo por el primer hurto," but this is not sustained by others, in the case of small thefts. For instance, *Mendieta* (Lib. II, cap. XXIX, p. 126): "El ladron que hurtaba hurto notable, ... por la primera vez era hecho esclavo." *Torquemada* (Lib. XII, cap. V, p. 581), but especially (Lib. XIV, cap. XXI, p. 564): "Al que hurtaba pequeños hurtos, si no eran muy frequentados, con pagar lo que hurtaba hacia pago." *Clavigero* (Lib. VII, cap. XVII).

[130] The statements are positive to that effect. *Mendieta* (Lib. II, cap. XXIX, p. 126), *Torquemada* (Lib. XII, cap. V, p. 581), *Velancourt* (Vol. I, p. 483). "*Andagoya*" (Col. de Doc: I, p. 386) exaggerates. "*De l'ordre de Succession observé par les Indiens*" Mr. Ternaux Compans' translation of a Simancas MSS., (1st Recueil, p. 226) confirms the "anonymous." *Frey Francisco de Bologna* ("*Lettre au R. P. Clément du Mendile*," 1st Recueil, p. 211): "Ils n'étaient pas tres cruels dans les punitions qu'ils infligeaient aux coupables." *Gabriel de Chaves* ("*Rapport sur la province de Mestitlan*," French translation by Mr. Ternaux, 2d Recueil, p. 312,—original held by Sr. Icazbalceta). *Herrera* (Dec. III, lib. IV, cap. VII, p. 121), about Nicaragua: "Cortaban los Cabellos al Ladron, i quedaba Esclavo del Dueño de lo hurtado, hasta que pagase." (Lib. III, cap. XV, p. 101), at Iucatan: "con los bienes del Ladron, despues de justiciado, satisfacian al agraviado. *Ixtlilxochitl* ("*Histoire des Chichimèques*," Cap. XXXVIII, p. 286): "Celui qui volait dans les villages ou dans les maisons devenait l'esclave du volé, quand il n'avait pas commis d'effraction, et que le vol était de peu d'importance; dans le cas contraire il était pendu." *C. Ortega* (Appendix to Veytia, Vol. III, p. 313): "Casi siempre se castigaba con pena de muerte, á menos de que la parte ofendida convinience en ser indemnizada por el ladron. Tambien tenia el ladron la pena de ser esclavo del dueño de lo que robaba; y si este no lo queria, era vendido por los jueces, y con su precio se pagaba el robo." *Bustamante* ("Tezcuco," Parte IIIa, cap. I, p. 197).

Several of the authors above quoted, relate the well known tale about "wrathy chief" (Montezuma) picking some ears of corn in a gardenplot, for which he was ap-

16:Bandelier E-4 (no date) 1880 NU7 Aztec NU7

685 duration of this bond, whether for certain time or for life, is not stated. If any one changed the limits (lines) of the individual lots ("talmilpa"), or of the official tracts, he lost his life. His offence was not so much against the occupant as against the kin, who had fixed the destination of each particular plot of land, and determined its boundaries.[135] It is also mentioned that "he 686 who squandered the property of minors left to his care" suffered death for it. The case could only be that of an oldest son, or of a father's brother, in whose care the "tialmilli" improved by the deceased was left, to be improved for the benefit of the latter's children. If now this warden failed to have that lot tilled for two years, it became lost to his wards, who were thereby left without means of subsistence. There was no restitution possible, therefore the negligent administrator paid with his life for the neglect.[136]

685 In general, we discern the ruling principle: that for theft there were but two ways of atonement. One consisted in the return of the stolen property, and if that was no longer possible, then the person of the thief had to suffer for it. Wherever no bodily labor could replace the value of the loss (as in the last case mentioned) the life of the criminal became forfeited to the kin, since the sufferers looked to that cluster for redress.[137] This carries us

prehended by its owner or at least occupant. This story shows, that no chief was exempt from punishment even for slight misdemeanors.

I refer to *Torquemada* (Lib. XIV, cap. XXI, p. 564), *Vetancurt* ("*Teatro*," Vol. I, p. 488), *Bustamante* ("*Tezcoco*," p. 197) for the assertion that the *kin* of the thief assisted him in discharging the penalty for his crime. The former says: "y si no tenia de que pagar, una, y dos veces, los parientes se juntaban, y repartian entre si el valor del hurto, y pagaban por el, diez, y doce mantas, y desde arriba: ni es de créer, que hacian Esclavo por quarenta, ni cincuenta maçorcas de mais, ni por otra cosa de mas precio, si él tenia de que pagar, ó los Parientes." On this important point—the *solidarity of the kindred* in the case of the crime of one of their number, see, further on, note 137.

[135] To the authorities so frequently quoted on other subjects, I will add here *Ixtlilxochitl* ("*Relaciones históricas*," Vol. IX, Lord Kingsborough, p. 367).

[136] *Torquemada* (Lib. XII, cap. VII, p. 356) calls this an "extravagant law." Further quotations useless.

[137] It is stated by *A. de Vetancurt* ("*Teatro Mexicano*, Vol. I, p. 488): "En los hurtos era ley general que siendo cosa de valor tenian pena de muerte; y si la parte se convenia, pagaba en mantas la cantidad al dueño, y otra mas para el fisco real; á esto acudian los parientes." This "obligation to help" on the part of the kin we have already met with in the case of marriage, where the kin assisted the newly married couple. (See *Burón*, "*Rapport*," p. 138): "Si le jeune homme était pauvre, la communauté où il avait été élevé l'aidait." We find it subsisting after the conquest, as when an Indian died, leaving debts, his kinship paid them for his estate (which in most cases was insolvent), or "worked it out for him." This is asserted as follows by *Fray Augustin Dastis Padilla* ("*Historia de la Fundacion y Discurso de la Provincia de*

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to a class of thefts and other similar offenses, committed against worship or "medicine."

Any attempt at seduction of a female who had taken the pledge of chastity in behalf of medicine, was most cruelly punished, both in the persons of the seducer and the female; and if a medicine-man broke his vows, he suffered a horrible death.[138]

We have already mentioned that it was a capital crime on the part of a warrior to take for himself a prisoner of war secured by another.[139] Such cases occurred only during an engagement or immediately after it. Why an action of that kind should entail so rigorous a punishment can be easily inferred, if we recollect that a captive of that kind became at once sacred — an object of medicine. No return could atone for the offence, since it had been committed against the "rites of worship," one of the kin's most sacred and important attributes. Under the same head must be placed the capital punishment of such as wrongfully appropriated to themselves gold or silver. Both of these metals were regarded as objects of medicine, and whoever seized them unlawfully, committed a crime against worship also.[140]

Santiago de México," 2d Edition, 1625, Lib. I, cap. XXVI, p. 83): "Si muere alguno dellos con deudas, como si los deudos las heredassen por parecerse deudas y deudas en el nombre, procuran luego entre los parientes pagarlas, porque el anima de su difunto no dilate la entrada en el cielo. Y si no tienen caudal para pagar, procuran que se perdone la deuda, y sino salen con esta traça, se dan luego todos en servicio al acreedor hasta que del todo se pague lo que el difunto devia. Viviendo yo en el colegio de San Luys de predicadores el año de 1586, sucedió morir un Indio que trabajaua en aquel sumptuoso edificio, y era muy diestro cantero; auia recibido dineros adelantados, y quando murió quedava deviendo veynte pesos, ó reales de á ocho. Viniéron luego al colegio los parientes reconociendo la deuda, y pidiendo que los ocupasen en servicio del colegio, para que se descontasse lo que su defunto denia. No se les dana mucho a los padres del colegio por cobrar estos dineros; porque demas de ser pocos no parecia que auia modo para cobrarlos; y mas por acudir á la devocion de los deudos, le dixéron á uno, que viniesse á trabajar en la huerta. Era marauilloso el cuydado del Indio, assi en venir cada dia, como en venir muy de mañana; y preguntandole un religioso la causa de su cuydado, dixo, que le tenia porque su pariente se fuesse al cielo, y desde alla le ayudasse con Dios, y no estuviesse en el infierno chiquito, que los predicadores llaman purgatorio."

My friend Col. F. Hecker, to whom I communicated the above, at once recognized in it an analogue to the ancient Teutonic "*Gesammt-Burgschaft*." He called my attention to the remarkable organization of the Germans. Compare *Luden* ("*Geschichte*," etc., Vol. I, p. 502), which valuable source I also owe to the kindness of the distinguished German jurist.

[138] In regard to "priests" it is also stated that they were merely degraded and cast away; but this is hardly probable since, the higher the position of the culprit, the severer was his punishment.

[139] Compare also *H. H. Bancroft* (Vol. II, p. 419). *Prescott* ("*Conquest*," Book I, chapter II, p. 47).

[140] *Mendieta* (Lib. II, cap. XXIX, p. 130). *Vetancurt* (Vol. I, p. 484): "Al que hurtaba

16:Bandelier E-4 (no date) 1880 NU7 Aztec NU7

685 671 217 In the above review of those offences and their punishments, immediately connected with that rule of tribal society which places the persons and property of the members of a kin under that kin's special protection, we cannot pretend to have furnished more than illustrations, and not at all a full catalogue. Still, enough has been told, we believe, to explain what is frequently styled the "penal code" of the ancient Mexicans. It is well known, that no actual written laws existed, but on the other hand, at the time of the Spanish conquest, the natives still had a large number of paintings which represented their own manners and customs. Since a considerable proportion of these picture-leaves bore on the same subjects, the inference could be easily drawn that they indicated forms for the guidance of the people, or in other words, that they were a substitute for a written code. This was not at all their object. They were simply efforts of native art intended to represent scenes of everyday life, since these were the most handy subjects for such purposes. Therefore such pictures are to be regarded as convenient remains of aboriginal art, out of which many details concerning aboriginal customs may be gathered, but not as "official" sources, from which to seek information as to the "law of the land."[141]

plata y oro lo desollaban vivo y sacrificaban, al dios de los plateros, que llamaban Xipe, y lo sacaban por las calles para escarmiento de otros, por ser el delito contra el dios fingido." This sacrifice to one particular Idol, however, is neither mentioned by Torquemada nor by his predecessor and main source, Mendieta. *Clavigero* (Lib. VII, cap. XVII. p. 487) copies Vetancurt almost textually. So does *Ortega* (Vol. III, p. 225, Appendix to *Veytia's* "*Hist. Antigua*"). *Bustamante* ("*Tezcoco*," p. 196) copies the former again. Still it is singular that the older the source, that is, the nearer in date to the time of the conquest, the less positive it is on the point of sacrifice. It will be safe to admit that the criminal was killed for a crime committed against worship, without insisting upon a particular place or mode of punishment.

[141] Elsewhere ("*On the Sources for Aboriginal History of Spanish America*," in Vol. XXVII of the "*Proceedings of the American Association for Advancement of Science*," 1878) I have attempted a discussion of the nature of Mexican paintings, and of their value as sources of history. I will add here but two positive declarations, on the subjects of the paintings, which I had not noticed at the time the above paper was read at St. Louis, Missouri, Aug., 1878. *Juan de Solorzano-Pereyra* ("*Disputationem de Indiarum Jure*," 1629, Vol. I, Lib. II, cap. VIII, p. 331, § 96): "Quod de Phœnicibus tradit etiam Lucanus, et in Mexicanis nostris experti fuimus, qui si non litteris, imaginibus tamen, et figuris ea omnia, quæ sibi memoranda videbantur, significabant, et conservabant." The other is of recent date, being taken from a discourse delivered before the "Academia Mexicana," by my friend Señor *D. J. G. Icazbalceta* ("*Las Bibliotecas de Eguiara y de Beristain*," p. 253 of No. 4. Vol. I, of "*Memorias de la Academia*"): "El antiguo pueblo que ocupaba este suelo no conocia las letras, y con eso está dicho que no podia tener escritores ni literatura. Su imperfectisimo sistema de representar los objetos é ideas, tenia que limitarse á satisfacer, hasta donde podia, las necesidades más urgentes de la sociedad, sin aspirar á otra cosa. Así es que no se empleaba sino en registrar los tributos de los pueblos, en señalar los límites de las

Thirty-second Chapter, which telleth of the tears, the lamentations, and the misery of those who had been robbed, whom those who had danced with the dead forearm had plundered; and of the rest of the houses belonging to [One Wind].

Inj cempoalli ommatlactli omome capitulo: yerchpa tlatoa in jnchoquiz, in jntlaocol, yoan in jnnetolinjliz in jchtequjlilloia: in quimjchtequjliaia in temamacpalitotique: ycan in oc ezpej calli, in jtech poulquj yn. 787 X 674

And those who had been despoiled later then revived, moved, continued to stir, and rose up; they arose one by one. They to whose home the thieves had come stood up. They looked into the hearth, and into their coffers, woven reed containers, and palm leaf baskets. The bracelets, the green stone, and the quetzal feather mats, the mats of quetzal feathers, no more lay about. All was bare and laid waste.

Auh in ichoantin otlaqujxtililoque: quinjquac muxcalia, molinja, mocuecuechinja, mesa, meesa, meostiquetza, in oacique inchan ychtecque: yn otlachia in tlecopa, yoan yn jntopco, in jnpetlacalco: in jtanaioc in maquiztli in chalchivitl: auh in quetzalpetlatl, yn jpetlaioc in quetzalli, aioc tle onivetztec, ça cácaxoc, ça nemjuhian:

They had carried away all the goods with them. All was gone. They had borne all away from them. They had heaped and massed the goods together, had robbed and looted them; they had stripped all of value. They had caused ruin and left them bare. They had worked thoroughly and wrought misery for them. They had plunged them into misery, destroyed them, and brought them to disaster.

oclacemjtqujque, otlaceia, oquimoetlacemjtqujlique, otlamaoloque, oquimontlamaolhujque, otlanamuxque, oquimontlanzamojclique, otlanvac ontlavicaque, onalanemjuhcantilique, oquimonpeztoccaubque, ovelquimonchiuhque, oquimonjcnechiuhque, icnoiotl oquimoetlatilitiaque, oquimotlaixpulvique, oquimontlacecemmanjlique:

In vain there was desperate searching. The women raised wails and howls, continuous howls; they raised a cry, beat their hands, pounded with their fists, and wept tears. Verily, how could it be? What could they do? Truly, of what profit was it? Of what profit was their work? What was left? What still could they say? Nothing more could be said. Where in truth could it be told? Each one even threw herself to the ground, cast herself on her face, beat her face, and wept for it was carried away, scraped all together,—scraped clean—swept bare. They had stripped the necessities of life [procured] by drudgery, the things arduously established and founded; the solace of [the labor of] the elbow and the knee; that which had appeared and accumulated with effort, to increase and augment the property and possessions of our lord, etc.

çan ẽa, ça nelli moch in mooma, tlachoquiztlcoa, tlatecoiooa, tlatetecoiooa, tlatzatzintleoa, momamatlatzinja, momamapoztequj, mjxaiopatzca in cioa: que çan nel oc nen, quen oc, tle ça nel nen, tle ça nen, tle oc nen, tle oc ylatollo: ac onnelhujlot, campa nel onmjtoz, in manel momamaiqui, moetentimaiavi, mjxtetzòtzona choca, ca onitqujoac, ontlacemjchictia, oncemjchictia, ontlachichictiaque, oconcemjchictique, yn atlaxcavilli, in aixcaio, in aixcan onzintic, onclooiooac, in jpatiuh in molicpid, in tetepantli, in aixcan onez, opçaliuh: injc omacoquetz, omotlapivi in jcocacauh in tetecujo in tlatquitl eꝫ.

In this manner they said that those who danced with a dead woman's forearm destroyed people, those known verily as genuine thieves, struck by

Iujn in qujnu tepeiouia: in mocenoua wel tetlachtecque, tetzdzauaque, tepetlachti: in ichoantia temamacpalitotique. Auh injc nocaiotilo tetzcuauaque: 787 X 674 685

A 787 674 685 stones, crushed-by-stones. And hence were they named "struck-by-stones"; if somewhere they could be taken, they just stoned them. They set upon them with stones; they were felled by stones; they beat and mangled them with stones; they crushed their heads with stones. Then and there were taken and plundered practically all their stolen goods and loot, etc.

A 787 And as was said above, so that it be not mere idle words, we shall consider it, and it will be discussed and explained in detail; we shall elucidate and explain at great length, expound it, develop it, and enlarge upon it. That which is different we shall go on explaining in detail; we shall do it twice, thrice, or four times. But to make it clear, we reflect upon, try to realize and give form to that not yet apparent, and not determined above; that which is still being established, considered, denied;[1] that which is not yet in one's heart, not yet understood or comprehended — not yet taken to heart, the discussion not yet clear. For many times we have gone hurrying back to all which hath been told. For that reason, that which is here present we pass over, we quickly skip over, we hurriedly leap over the fragment. No more do we correct or deal with what hath been mentioned: the different accounts of the day signs each in its proper place. So only here they are gathered, assembled, brought together, amassed, and arranged in succession. We place them in clusters and join and put them together. So only these are being clustered, brought together, joined together, set separately, arranged in procession and in succession, the different numbers of the series, with their assigned tasks: Two House, Three Lizard, Four Serpent, Five Death, Six Deer, Seven Rabbit, Eight Water, Nine Dog, Ten Monkey, Eleven Grass, Twelve Reed, Thirteen Ocelot.

When the count of these different days, the time of each one of the days, had ended, then set in — intla cana owi anoque, çan qujentzacoca, qujentzicali, tetica vetzi, qujentzotzoma, qujenpatica, qujenquaterpipizinja: yquac vncan cujilo, nanoalilo in amo çan quenmjch injchtech, intlapojuli. &c.

Auh in juh omjto tlacue: inje amo çan ilnujtlatimili tocontecmjtaque, onmjton, onmotecpujmatiz, ipan tontlatepeoaque, tontlatepujperoaque, tocontlatepenaltique, tocontlaaaqujlique, tocontlatlalilique: in amo çan ixchuel tictoqujmatinemjtique, tictepatzinque, tiquetzpevinque, ticnanappavinque: çan ixhuel ipan tontzipca, tontoiolpoa, tocontzitoca, ipan tontlanxiocolia, in aiamo nec, in aiamo panj oalmotlalia: in oc thapechixhtica, mocujlitica, mococjcujlitica, in aiamo tcyollipan, in aiamo teiollo quiçanmjquj, in aiamo teiollo contoca, in aiamo teiollo contoca, yn aiamo teiollo itlan quiça, teiollo ipan inuh tlatolli: ca mjecpa onnecujcujtlacerpinca, in jnqujch omjto: ipampa in ça ajcan ixco tonquiça, tonconchôcholhujtiquiça, tocunchuechcholhujtiquiça. Aiocmo vmpa tottlavica: aiocmo tocontchouilhuja yn onotenenli, inje nenequa tlatollotoque inquiteme tonalti: yn çan njcan onmocentlalia, onmotecpichoa, onmonechicoa, onmocniquixtia, onmotoquilia, tiquimonnenetechtlalia, tiquimonnenetechçaloa, tiquimonnenetechtlalia: ic çan onnenetzolcate, nenetechcate, nenetech çalhuticate, moquequetzticate, mototocaticate, mototoquiticate, yn jtquiteme njcan onncalpan tequippanoque: in ixhuel vme calli: ey cuecpalin, navi cuel, macuilli miquiztli, chiquacen maçatl, chicome tochtli, chicuei ail, chicunavi ytzcuintli, matlactli ocomatli, matlactli oçe malinalli, matlactli onnome acatl, matlactli omey ocelotl.

Yn jquac oontlan inquilhuitl yn, in thpealpan: yn jntlacemjlhuijolhuian: nimjan oalmoquetza.

1. Repetition of an almost wholly erroneous or lightly misread text in the Nahuatl text.